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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,676	05/02/2001	Raimar Boehlke	64135	4806

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05/07/2004

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EXAMINER

KOKABI, AZADEH

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/847,676

Applicant(s)

BOEHLKE ET AL.

Examiner

Azy Kokabi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-11, 14-17, 28-29, 32-34, 36-43, 45 is/are rejected.
- 7) ☐ Claim(s) 13, 18-27, 30-31, 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Minor Claim Suggestions By Examiner

1. The body of the claims of the present invention is understood by the Examiner, however the following changes are recommended to improve clarity. The claims have been examined on the merits including the suggested changes below.

Regarding the claims, it is suggested that "the abovementioned" be changed to --said--. Furthermore, in regard to claim 28, it is suggested that "if appropriate" be deleted.

Information Disclosure Statement

2. The several references (one of which entitled Traffic Monitoring Tool for Bandwidth Management) fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 36-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 36, the phrase "according to patent DE 199 42 951.0-C1" renders the claim indefinite because it is unclear what limitation(s) of the DE patent intent to be part of the claimed invention. The intended scope of the phrase is indefinite.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 9-11, 14-17, 28-29, 32-34, 36-43, 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Greenstein (U.S. Patent No. 5,964,773).

Greenstein discloses a suturing device and suture needles having a shaft-like suture guide (#12), sutures (#22) that are fastened on needles (#21), which are guided in openings (#23).

Greenstein further discloses a suture guide having a rear suture feed part (see openings in needle as depicted in figures 6-9), a front suture-accommodating part (#19) and a central suture release/suture clamping part (#17/37). The central suture release/suture clamping part can be rotated (see at least figure 3 and column 2, lines 57-68 through column 3, lines 1-4) at least relative to the front suture-accommodating part (#19) and it has a cross section that, in at least one rotary position, it allows the sutures feed from the rear suture feed part to be introduced into accommodating opens exposed in the front suture accommodating part, and in a rotary position differing from the abovementioned rotary position, it allows the sutures to be secured for drawing the entire suture guide device out of an opening (compare figures 2A through figures 2d). The central suture release/suture-clamping part (#17/37) can be expanded in one direction compare figure 2A to figure 2c), which tensions a wall of a membrane.

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Furthermore, Greenstein discloses an oval-shaped cross section of the guide parts (see at least figure 1). The central guide part is formed by a separate region of reduced cross section of the rear suture feed part (see figure 2c). The thickness of the central guide part corresponds to a wall of a membrane. As depicted in figures 6-9, the rear suture feed part has holes (#47) in which the sutures are fastened and placed into accommodating holes (#23). The central suture release/suture clamping part is connected to a hand grip (#15) which passes through the rear suture feed part in a rotatable manner and connected to adjustment wheels (#39). The device of Greenstein has a rotary adjustment wheel (#16 in figure 1) that allows the rotary adjustment wheels to be adjusted into determined angle positions relative to the hand grip (#15) and the central suture release part. The device has a guide element (#20a) and a sleeve part (#12).

Greenstein further teaches that the central release part is expanded mechanically. Greenstein teaches that the suture release part can be expanded and moved in an outward direction (see at least figure 5). The central suture guide part is divided into a central part (#32) and two adjacent edge parts (#37) which can be moved relative to the central part (see at least figure 5). Greenstein teaches of pulling and pushing device wires (#58 ad #59) which are pulled together and upward along the shaft to be held by the surgeon's fingers in order to maintain asecure downward tension and apply constant downward seating force on the needles in the wings (see at least column 3, lines 40-50).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 12 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenstein ('773).

As previously, disclosed in paragraph 6 above, Greenstein discloses all the limitations as set forth, however Greenstein fails to disclose the width of the central suture clamping part or a hydraulic chamber, which moves the central part.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided for a hydraulic chamber rather than mechanical drive gears, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art (see MPEP 2144.04).

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the width of the central guide part, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art (see MPEP 2144.04).

Allowable Subject Matter

9. Claims 13, 18-27, 30-31, and 35 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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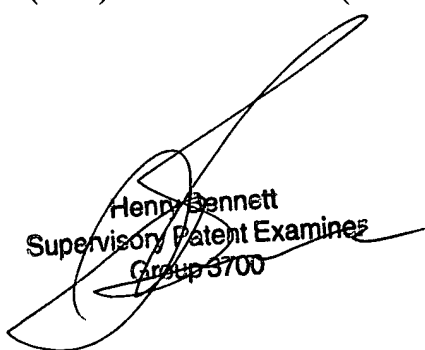
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azy Kokabi whose telephone number is (703) 306-4154. The examiner can normally be reached on Monday- Friday, 6:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AK



Henry Bennett
Supervisory Patent Examiner
Group 3700